

Beth E. Terrell, CSB #178181  
Email: bterrell@terrellmarshall.com  
Mary B. Reiten, CSB #203412  
Email: mreiten@terrellmarshall.com  
Adrienne D. McEntee, *Admitted Pro Hac Vice*  
Email: amcentee@terrellmarshall.com  
TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

[Additional counsel appear on signature page]

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BEE, DENNING, INC., d/b/a  
PRACTICE PERFORMANCE  
GROUP; and GREGORY CHICK,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CAPITAL ALLIANCE GROUP; and  
NARIN CHARANVATTANAKIT,

Defendants.

NO. 3:13-cv-02654-BAS-WVG

**PLAINTIFFS' MOTION FOR  
COSTS AND INCENTIVE  
AWARDS**

Complaint Filed: 11/5/13

DEMAND FOR JURY TRIAL

Honorable Cynthia Bashant

DATE: November 14, 2016

TIME: 10:30 a.m.

COURTROOM: 4B, 4th Fl. Schwartz

PLAINTIFFS' MOTION FOR COSTS  
AND INCENTIVE AWARDS  
3:13-cv-02654-BAS-WVG  
3:14-cv-02915-JLS-MDD

1 DANIELA TORMAN, individually  
2 and on behalf of all others similarly  
3 situated,

4 v.

5 CAPITAL ALLIANCE GROUP d/b/a  
6 CAPITAL ALLIANCE d/b/a  
7 BANKCAPITAL d/b/a  
8 BANKCAPITAL DIRECT d/b/a  
9 TRUSTED BANCORP, NARIN  
10 CHARANVATTANAKIT a/k/a  
11 NARAN CHARAN a/k/a CLAYTON  
12 HEATH, and JOHN DOES 1-10,

13 Defendants.

NO. 3:14-cv-02915-JLS-MDD

Honorable Janis L. Sammartino

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## I. INTRODUCTION

Plaintiffs respectfully request the Court grant this motion and award (1) Class Counsel \$22,096 in costs; and (2) incentive payments of \$4,819 each to Plaintiffs Bee, Denning, Inc., Gregory Chick, and Daniela Torman.

## II. STATEMENT OF FACTS

In this consolidated class action lawsuit, Plaintiffs allege that Defendants Capital Alliance Group and Narin Charanvattanakit sent Plaintiffs and other similarly situated individuals unwanted, unauthorized, faxes advertising a short term business loan, and unwanted, unauthorized prerecorded messages on their cellular telephones. After years of litigation, including extensive discovery, and a settlement conference over which the Hon. Gallo presided, Plaintiffs and Defendants have entered into a Settlement Agreement which requires substantial injunctive relief, and provides for a fair, reasonable, and adequate resolution of the claims of Plaintiffs and the Settlement Classes in light of the large number of class members and Defendants' limited financial resources. *Id.*; Dkt. No. 71-3 ("Settlement Agreement").

Relevant to this motion, the Settlement Agreement provides that each of the three Plaintiffs will receive \$4,819 (collectively, \$14,457) for his or her statutory damages and services as representatives of the Class. Settlement Agreement ¶ 2.3. These awards will compensate Plaintiffs for their time and effort and for the risk they undertook in prosecuting this case. Additionally, Defendants have agreed to pay Class Counsel's costs in the amount of twenty-two thousand ninety-six dollars (\$22,096). Settlement Agreement ¶ 2.4. These costs, which do not included the approximately \$200,000 in attorneys' fees Class Counsel have incurred (and which are waived under the Settlement Agreement), were necessary to secure the resolution of this litigation. *Id.*

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### III. AUTHORITY AND ARGUMENT

#### A. Service Awards for the Class Representatives are Reasonable

Service awards (sometimes called “incentive” awards) compensating named plaintiffs for work done on behalf of the Settlement Class attempt to account for financial or reputational risks associated with litigation, and promote the public policy of encouraging individual plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646-47 (S.D. Cal. 2011) (“Incentive awards are fairly typical in class actions.”); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1328 (W.D. Wash. 2009) (“The trial court has discretion to award incentives to the class representatives.”). In reviewing whether an incentive award is appropriate, the court should take in account “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those action, ... [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Jones v. Agilysys, Inc.*, Case No: C 12-03516 SBA, 2014 WL 2090034, at \*3 (N.D. Cal. May 19, 2014) (quoting *Staton v. Boeing Co.*, 327 F.3d 928, 977 (9th Cir. 2003)) (ellipses and internal marks in original).

Here, Class Counsel ask the Court to award service payments to the Class Representatives in the amount of \$4,819 each. These awards will compensate the Class Representatives for their time and effort in stepping forward to serve as proposed class representatives, assisting in the investigation, keeping abreast of the litigation, and meeting and communicating with Class Counsel on an ongoing basis regarding the progress of the litigation, settlement efforts, and settlement terms. Terrell Decl. ¶ 2. Ms. Bee and Mr. Chick also prepared for and sat for depositions, and Mr. Chick and a representative for Bee, Denning, Inc. appeared in Court for an early neutral evaluation. *Id.* The requested \$4,819 awards are

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reasonable under the circumstances, and well in line with awards approved by federal courts in this circuit. *See, e.g., McKenzie v. Fed. Exp. Corp.*, No. CV 10-02420 GAF PLAX, 2012 WL 2930201, at \*11 (C.D. Cal. July 2, 2012) (approval of \$5,000 service award); *Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at \*37 (C.D. Cal. Nov. 23, 2013) (approving \$5,000 incentive awards for each named plaintiffs even though their involvement was “relatively minimal and not particularly burdensome”).

**B. Plaintiffs’ Requested Costs Are Reasonable**

An attorney is entitled to recover out-of-pocket expenses that would normally be charged to a fee paying client. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.1994) (citation omitted). “In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). An award of costs is appropriate when attorneys obtain injunctive relief for the class, even if there is no financial recovery for the class. *Lilly v. Jamba Juice*, No. 13-cv-2998-JST, 2015 WL 2062858 at \*5 (N.D. Cal. May 4, 2015) (awarding reasonable costs in injunctive relief class); *Riker v. Gibbons*, No. 3:08-cv-115-LRH-VPC, 2010 WL 4366012, \*7 (D. Nev. Oct. 28, 2010) (awarding costs based on parties’ negotiated agreement); *Richardson v. L’Oreal U.S.A., Inc.*, 951 F.Supp.2d 104, 108 (D.D.C. 2013) (same).

Here, Defendants agreed to reimburse Class Counsel for their costs. Settlement Agreement ¶ 2.4. Class Counsel incurred out-of-pocket costs totaling \$22,096.00, primarily to cover expenses related to filing fees, computerized legal research, investigation expenses, travel, mediation fees, and administrative costs such as copying, mailing, and messenger expenses. Terrell Decl. ¶ 4. Class Counsel put forward these out-of-pocket costs without assurance that they would ever be repaid. *Id.* These out-of-pocket costs were necessary to secure the

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resolution of this litigation, and should be recouped. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in class action litigation).

#### IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant this motion and award (1) Class Counsel \$22,096 in costs; and (2) incentive payments of \$4,819 each to Plaintiffs Bee, Denning, Inc., Gregory Chick, and Daniela Torman.

RESPECTFULLY SUBMITTED AND DATED this 30th day of September, 2016.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, CSB #178181  
 Beth E. Terrell, CSB #178181  
 Email: bterrell@terrellmarshall.com  
 Mary B. Reiten, CSB #203412  
 Email: mreiten@terrellmarshall.com  
 936 North 34th Street, Suite 300  
 Seattle, Washington 98103-8869  
 Telephone: (206) 816-6603  
 Facsimile: (206) 319-5450

Stefan Coleman  
 Email: law@stefancoleman.com  
 LAW OFFICES OF STEFAN COLEMAN  
 201 South Biscayne Boulevard, 28th Floor  
 Miami, Florida 33131  
 Telephone: (877) 333-9427  
 Facsimile: (888) 498-8946

*Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on September 30, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Gene S. Stone, CSB #162112  
Email: gstone@homan-stone.com  
HOMAN & STONE  
12 North Fifth Street  
Redlands, California 92373  
Telephone: (909) 307-9380  
Facsimile: (909) 793-0210

Janine C. Prupas  
Email: jprupas@swlaw.com  
SNELL & WILMER, L.L.P.  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501  
Telephone: (775) 785-5440  
Facsimile: (775) 785-5441

*Attorneys for Defendants*

Scott A. Marquis  
Email: smarquis@maclaw.com  
Candice E. Renka  
Email: crenka@maclaw.com  
MARQUIS AURBACH COFFING  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816

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1 Gary E. Mason.  
2 Email: gmason@wbmlp.com  
3 WHITFIELD, BRYSON & MASON, LLP  
4 1625 Massachusetts Avenue NW, Suite 605  
5 Washington, DC 20036  
6 Telephone: (202) 429-2290

*Attorneys for Plaintiff Daniela Torman*

7 DATED this 30th day of September, 2016.

8 TERRELL MARSHALL LAW GROUP PLLC

9  
10 By: /s/ Beth E. Terrell, CSB #178181  
11 Beth E. Terrell, CSB #178181  
12 Email: bterrell@terrellmarshall.com  
13 936 North 34th Street, Suite 300  
14 Seattle, Washington 98103-8869  
15 Telephone: (206) 816-6603  
16 Facsimile: (206) 319-5450

*Attorneys for Plaintiffs*

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